

EXECUTIVE NOTE

THE SEA FISHING (TRANSITIONAL EU TECHNICAL CONSERVATION MEASURES) (SCOTLAND) ORDER 2010 (SSI No 2010/100)

1. The above instrument was made in exercise of the powers conferred by section 30(2) of the Fisheries Act 1981 and paragraph 1A of Schedule 2 to the European Communities Act 1972. Paragraph 1A of Schedule 2 is used so that any reference in the instrument to Council Regulation 43/2009 is construed as a reference to that Regulation as amended from time to time. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The title SSI has been introduced to bring fully into effect, in the Scottish zone and in respect of Scottish fishing vessels wherever they may be, the transitional technical conservation provisions contained in Annex III to Council Regulation 43/2009 (the annual Regulation fixing Total Allowable Catches and Quota for 2009). These provisions were extended (until 30th June 2011) and amended by Council Regulation 1288/2009, which was agreed at the November Fisheries Council 2009.

3. These measures impose by-catch restrictions on species such as cod, whiting and haddock; place restrictions on fishing in certain areas by introducing spatial planning to protect fish stocks and deep sea corals; set minimum landing sizes for some vulnerable species and require extra technical specifications, such as more selective square mesh panels, in certain types of fishing gear which will increase selectivity and reduce discards.

4. The Scottish Government requires to make this instrument to meet its EU obligations or it will be subject to potential infraction proceedings.

5. Any amendments to Council Regulation 43/2009 will be publicised on the Scottish Government's official website and intimated in writing to industry members.

Consultation

6. As with all Fisheries Council negotiations, the Scottish Government engaged with representatives from the fishing federations and producer organisations in the run up to and throughout negotiations.

7. Officials and Ministers from the other UK Fisheries Administrations (DEFRA, WAG and DARDNI) were involved in the negotiations. As part of the policy discussion and formulation of an agreed UK line, Marine Scotland held several meetings with fishing industry representatives on the proposed Technical Conservation Regulation. These discussions informed the Scottish position and ultimately the UK negotiating position.

Financial Effects

8. There are no additional financial implications for the fishing industry, as all the measures were already in force during 2009 and have been rolled over until a new (long-term) Technical Conservation Regulation is agreed under co-decision procedure by the Council of Fisheries Ministers and the European Parliament.

9. A copy of the Regulatory Impact Assessment is attached.

Marine Scotland
Scottish Government
March 2010

Regulatory Impact Assessment

1. Title

1.1 The Sea Fishing (Transitional EU Technical Conservation Measures) (Scotland) Order 2010.

2. Purpose and intended effect

Objectives

2.1 The title SSI has been introduced to bring fully into effect, in the Scottish zone and in respect of Scottish fishing vessels wherever they may be, the transitional technical conservation provisions contained in Annex III to Council Regulation 43/2009 (the annual Regulation fixing Total Allowable Catches and Quota for 2009). These provisions were extended (until 30th June 2011) and amended by Council Regulation 1288/2009, which was agreed at the November Fisheries Council 2009

Background

2.2 Failure to reach agreement on the general Technical Conservation measures throughout community waters and in international waters prior to the introduction of the Lisbon Treaty. This Regulation will now be dealt with under co-decision and may take up to 18 months to secure agreement. In order to keep measures already agreed for 2009 in force the only legal process available to the European Commission was to make Council Regulation 1288/2009 which will keep these transitional technical measures in force for the next 18 months. These measures place restrictions on fishing in certain areas by introducing spatial planning to protect deep sea corals; impose by-catch restrictions and minimum landing sizes on some vulnerable species and set extra technical specifications when using certain types of fishing gear to increase selectivity and reduce discards.

Rationale for government intervention

2.3 The Scottish Government is required to meet its EU obligations or it will be subject to potential infraction proceedings. Additionally, in terms of responsible fisheries management Scottish vessels and other vessels operating in Scottish zone are expected to adhere to technical conservation measures to ensure sustainability of fisheries stocks.

3. Consultation

Within government

3.1 Officials and Ministers from the other UK Fisheries Administrations (Department for the Environment, Food and Rural Affairs (DEFRA), Welsh Assembly Government (WAG) and the Department for Agriculture and Rural Development Northern Ireland) were involved in the negotiations. As part of the policy discussion and formulation of an agreed UK line Marine Scotland held several meetings with fishing industry representatives on the proposed

Technical Conservation Regulation. These discussions informed the Scottish position and ultimately the UK negotiating position.

Public Consultation

3.2 As with all Fisheries Council negotiations the Scottish Government engages with representatives from the fishing federations and producer organisations in the run up to and throughout negotiations.

4. Options

4.1 Two options have been considered in implementing this Regulation: Option 1: Do nothing and Option 2 maintain the status quo which would require a new SSI to be brought into force. Option 1 would result in a regulatory vacuum and mean that the Scottish Government was failing to discharge its regulatory obligations.

5 Costs and benefits

Sectors affected

5.1 All Scottish fishing vessels. Marine Scotland Compliance who have responsibility for the enforcement of fisheries management rules.

Costs

5.2 Option 1 - There are no additional costs associated with this SSI. These measures are already in place and therefore will pose no additional cost or benefit.

5.3 Option 2 - The removal of the measures may result in a threat to the sustainability of fish stocks in these areas.

Benefits

5.4 Option 1 - There are no benefits associated with this option, the absence of this SSI will result in a failure to manage stocks sustainably and in line with European legislation on technical conservation requirements.

5.5 These measures place restrictions on fishing in certain areas and with certain types of fishing gear to protect fish stocks and deep sea corals, impose by-catch restrictions and minimum landing sizes on some vulnerable species and set extra technical specifications when using certain types of fishing gear.

6. Small/Micro Firms Impact Test

6.1 The majority of businesses affected will be small or micro businesses. The measures apply to all fishing vessels that operate in the sea areas specified. There will be no additional impact on small/micro firms as this Order merely continues the current arrangements. Failure to do so will result in unregulated activity which will have a negative impact of stock management. For the purposes of fisheries management many vessels can be classified as small businesses. At the start of 2010 Marine Scotland wrote to all vessels explaining the

technical conservation roll over arrangements. No comments were received from business on the proposals

7. Legal Impact test

7.1 The proposals will not have any impact upon legally compliant fishing vessels. Persistent failure to comply with that requirement undermines the credibility of the Scottish fishing fleet and stock sustainability. It is then the responsibility of Marine Scotland to investigate any failure to comply with technical and conservation rules. In the event of any breach of the rules Marine Scotland Compliance will still be able to refer cases to the COPFS for prosecution but this does not alter or undermine an individual's access to the justice system. It does, in the majority of cases, allow them to accept and pay an administrative penalty without venturing into the court system should they elect to do so.

8. Test Run of business forms

8.1 The introduction of this SSI does not result in any new forms or reporting requirements.

9. Competition Assessment

9.1 This proposal would impact directly on the fish catching sector and those enforcing it (Marine Scotland Compliance).

9.2 The enforcement of fisheries legislation is done to create a level playing field to ensure that all vessels comply with technical and conservation measures.

10. Enforcement, Sanctions and monitoring

10.1 The Compliance section of Marine Scotland is responsible for enforcing this SSI. There are no changes to current practice.

11. Implementation and delivery plan

11.1 This SSI will stand for 18 months at least or until the European Commission has managed to secure agreement to the new Technical Conservation Regulation.

12. Post-implementation Review

12.1 Following the revival of the Commission's negotiations of a new draft of the Technical Conservation Regulation Marine Scotland will resume consultation with Scottish fishing industry representatives to ensure that the new proposals are simplified and effective.

13. Summary and Recommendation

13.1 In order to ensure continuity of fisheries management technical conservation measures Marine Scotland recommends option 2 until there is a new Regulation agreed by the Member States and the European Institutions in 2011.

Richard Lochhead
Scottish Government

11 March 2010